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August 25, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: **Ex Parte Presentation**, *CC Docket No. 96-98, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; CC Docket No. 98-147, Deployment of Wireline Services Offering Advanced Telecommunications Capability*

Dear Ms. Salas:

At the Commission's request, SBC submits this letter in response to AT&T's August 4, 2000 ex parte on line splitting issues.[1] CLECs can efficiently engage in line splitting today by ordering a new xDSL-capable unbundled loop and switch port, which the ILEC will deliver to the CLEC's collocation space. At that point, the CLECs need only complete installation of a splitter at the collocation space. CLECs have a right to line split using their own splitters, and incumbents have a duty to provide nondiscriminatory access to the underlying UNEs and collocation. These core rules provide a sufficient framework for resolving any line-splitting issues that arise in collaborative sessions and carrier-to-carrier negotiations.

AT&T would nevertheless have the Commission impose new, industry-wide rules that would require modifications to the incumbents' networks entailing at least as much labor, time, and money as line sharing – and likely more. There is no evidence that the potential benefits are commensurate with the enormous efforts AT&T's proposal would entail, especially in light of the viable alternatives available to CLECs today.

[1] Letter from Frank S. Simone, AT&T, to Magalie Roman Salas, FCC, August 4, 2000 ("AT&T Ex Parte").

Aside from failing to demonstrate that its proposals represent wise policy, AT&T's proposals for extensive regulation ignore important practical obstacles and, in some instances would be nonsensical – not to mention unlawful if implemented as AT&T proposes. Nevertheless, as described below, SBC is actively considering ways of implementing various new line splitting procedures. Any proposed solution, however, should reflect input from all providers – including data providers – and not merely the unilateral request of one particular company.

Discussion

Although AT&T focuses particularly on migration from a UNE-P to a line splitting arrangement where one of the participating CLECs provides the splitter, AT&T ignores the options CLECs have today to provide either voice-only or data-only services over a split line.

Just as a single CLEC may provide both voice and data services over the same line (using a single xDSL-capable unbundled loop terminated to its collocated splitter and DSLAM equipment), voice and data CLECs may partner without any special participation by the ILEC. Assuming that the CLECs are sharing collocation space, one of the two CLECs can simply order a new xDSL-capable unbundled loop and switch port, which the ILEC will deliver to the CLEC's collocation space. The CLECs need only complete installation of a splitter at the chosen collocation space. This is easily accomplished today and involves only two local service requests ("LSRs") to the incumbent. CLECs with separate collocation space may also partner, with one ordering the xDSL-capable loop and the other ordering the unbundled switch port. Under existing terms, these CLECs may arrange for cabling between their collocation areas in order to connect the switch port and the splitter. Likewise, CLECs are free to order two loops to provide their services.

These line splitting options are in addition to the data CLEC's ability to line share with the incumbent LEC. As SBC detailed in a recent report to the Commission regarding implementation of line sharing,[2] SBC has successfully met (indeed, exceeded) the requirements in the Commission's *Line Sharing Order*.[3] After committing in excess of $85 million for new equipment and network upgrades and more than 65,000 personnel hours, the SBC ILECs made line sharing available on May 29, 2000, a week before the Commission's deadline. CLECs may install and use their own splitter equipment, or lease splitter capacity from the SBC ILECs. That is, even though the *Line Sharing Order* recognizes that incumbent LECs are under no obligation to provide a splitter,[4] SBC ILECs have accommodated CLEC requests by agreeing to provide splitters on a port-at-a-time basis. As of August 17, 2000, including interim agreements, the SBC ILECs have signed

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[2] SBC Line Sharing Implementation Report, attached to Letter from Priscilla Hill-Ardoin, SBC, to Lawrence E. Strickling, FCC, June 20, 2000.

[3] Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 20912, 20949, ¶ 76 (1999) ("*Line Sharing Order*").

[4] *Id.*

80 agreements; 26 others are in the process of being completed. Today, SBC is offering line sharing in all of its operating company territories consistent with those agreements.

Despite these available options and the ease with which carriers can engage in line splitting, AT&T nevertheless asks the Commission to adopt new rules to micro-manage ILEC processes in the unique situation of migrating from the UNE-P to line splitting. Whatever significance the UNE-P may have in the future, today, the UNE-P is used to serve only a small fraction of all lines. This represents a tiny piece of the overall competitive picture, and only one way a voice or data CLEC that wishes to partner could effectuate its business plans. The industry should decide if such industry-wide requirements are necessary. As described below, moreover, AT&T's requests are at odds with well-established legal limitations, and would involve operational difficulties that would take substantial time and collaboration among carriers to overcome.

Line Splitting Using ILEC-Supplied Splitters.

SBC is not required to provide splitters under any scenario, whether line sharing or line splitting. Nevertheless, the SBC ILECs have spent more than $60 million to provide splitters voluntarily in the line sharing context, and SBC is considering whether to provide them voluntarily in the CLEC/CLEC line splitting context. In line sharing, SBC is providing voice service to the end user. But when SBC does not provide any telecommunications service at all, as in the CLEC-to-CLEC line splitting scenario, SBC's only business opportunity arises from installing the splitter itself. That opportunity is inherently limited, although it is one that SBC is interested in evaluating by the end of the year.

AT&T repeats its assertion that ILECs should be required to provide splitters when a CLEC purchases the entire loop and provides both voice and data services on that loop. As the Commission has already recognized, this is not required under current law. *See* Memorandum Opinion and Order, *Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, CC Docket No. 00-65, FCC 00-238, ¶¶ 325-328 (rel. June 30, 2000) ("*Texas 271 Order*"). Moreover, AT&T has offered no sound reason why the Commission might want to adopt such a new requirement.

In the first place, incumbent LECs have no obligation to reconfigure their networks specifically for purposes of unbundling. AT&T asks the Commission to require ILECs to provide new splitters, so that AT&T can use those newly installed splitters to route AT&T's voice traffic to the ILEC's switch and the data traffic to a CLEC's DSLAM. AT&T Ex Parte at 2 & Attach. 2 at 4. This request violates the Eighth Circuit's holding that "subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC's *existing* network – not to a yet unbuilt superior one."[5] As the Court of Appeals

[5] *See Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997), *rev'd in part, aff'd in part*, 525 U.S. 366 (1999), *aff'd in relevant part*, No. 96-3321, 2000 U.S. App. LEXIS 17234, at *34-*35 (8th Cir. July 18, 2000).

recently reaffirmed, the Act simply "does not require the incumbent LECs to do all the work" of building a competing network, and the Commission cannot mandate otherwise.[6]

Furthermore, with respect to line-shared lines that already are equipped with ILEC-supplied splitters, AT&T does not purport to show in any of its attached filings[7] how the incumbent's splitter would meet the "impair" test of 47 U.S.C. § 251(d)(2). That is unsurprising, as AT&T's request is directly contrary to the Commission's finding that "equipment needed to provide advanced services, such as DSLAMs and packet switches, are available on the open market at comparable prices to incumbents and requesting carriers alike."[8] Incumbent LECs buy splitters from the same vendors as CLECs, and have no substantial competitive advantage in their installation.

Indeed, in its *Line Sharing Order*, the Commission concluded that ILECs must make the high-frequency portion of the loop available only when the ILEC is also providing analog voice service because, when the ILEC is no longer providing voice service over the loop, CLECs are not "impair[ed]." That is, the Commission has already squarely held that "we do not find impairment where the incumbent LEC is not providing voice service on the customer's loop."[9] Thus, the Commission has previously refused AT&T's request precisely because there was no evidence in the record to support a finding of impairment:

> The record does not support extending line sharing requirements to loops that do not meet the prerequisite condition that an incumbent LEC be providing voiceband service on that loop for a competitive LEC to obtain access to the high frequency portion. . . . [I]ncumbent carriers are not required to provide line sharing to requesting carriers that are purchasing a combination of network elements known as the platform. In that circumstance, the incumbent no longer is the voice provider to the customer.[10]

The Commission mandated line sharing when the incumbent provides voice service because "only the voice service provider that already controls the entire loop can provide xDSL-based service to that customer."[11] The concern that motivated the *Line Sharing Order* was that CLECs would have to purchase entire unbundled loops to provide their data services to the incumbent's voice customers, whereas the voice provider could

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[6] 2000 U.S. App. LEXIS 17234, at *40.

[7] *See* AT&T Ex Parte, Attachs. 1-7.

[8] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunication Act of 1996*, 15 FCC Rcd 3696, 3836, ¶ 308 (1999) ("*UNE Remand Order*").

[9] *Line Sharing Order*, 14 FCC Rcd at 20947, ¶ 72 n.160.

[10] *Id.* at 20947, ¶ 72.

[11] *Id.* at 20932, ¶ 38.

provide data over the same voice line.[12] "[I]t is the fact that the incumbent is already providing voice service on a loop that makes the preservation of competitive access to the high frequency portion of that loop so vital."[13] When a CLEC is the voice provider, however, it (or another partnering CLEC) can provide xDSL service to that CLEC voice customer without the need for a second loop or ILEC involvement in the sharing arrangement. Thus, the rule established by the *Line Sharing Order* correctly reflects that CLECs are not impaired without access to line sharing when the incumbent does not provide voice service.[14] AT&T has offered no evidence upon which the Commission could reverse its prior conclusion. *See Bush-Quayle '92 Primary Comm., Inc. v. FEC*, 104 F.3d 448, 453 (D.C. Cir. 1997) (an agency cannot depart from its precedent without a reasoned explanation) (citing *Interstate Quality Servs., Inc. v. RRB*, 83 F.3d 1463, 1465 (D.C. Cir. 1996); *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971)). *See also Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (agency must "articulate a satisfactory explanation for its action").

Nor would it be sound policy to change course. CLECs are well able to install their own splitters. In fact, as an SBC witness explained during the California PUC's proceeding on line sharing, a CLEC concerned about service disruption could convert its existing UNE-P customers to line-splitting arrangements with exceedingly little risk of unexpected outage:

> [A] voice CLEC could partner with a data CLEC that has its own splitters and provide both DSL service and voice services over a separate loop to one of the voice CLEC's existing customers served via UNE-P. Using Local Number Portability, the CLEC's voice service – provided via UNE-P – could then be converted over to the separate line shared loop. Once the conversion is complete the UNE-P service could be disconnected. This could be accomplished without a significant risk of disruption of services since the voice CLEC would control both the provisioning of the line shared voice service and the disconnect date for the UNE-P service. In fact, the risk of disruption in service would be less than when provisioning line sharing on an existing loop serving a Pacific Bell voice customer since that conversion requires disconnecting the existing loop and OE connection in order to wire in the splitter.[15]

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[12] *Id.* at 20931-32, 20932-33, ¶¶ 38, 40.

[13] *Id.* at 20940, ¶ 56.

[14] *Id.* at 20947, ¶ 72 & n.160 ("[W]e do not find impairment where the incumbent LEC is not providing voice service on the customer's loop."); *see also id.* at 20940-41, 20948, ¶¶ 57, 74.

[15] Rebuttal Testimony of Betty Schlackman, Area Manager Network Services, SBC Communications Inc., *Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks*, Rulemaking 93-04-003 (Cal. PUC Apr. 5, 2000). The California PUC declined to require ILECs to provide splitters in the line splitting context. *See* Final Arbitrator's Report, *Rulemaking on the Commission's Own*

In these circumstances, there is simply no legal or policy justification for mandating that ILECs provide splitters to CLECs.

Line Splitting Using CLEC-Supplied Splitters.

In addition to proposing an unlawful mandate of incumbent-provided splitters, AT&T asks the Commission to "clarify" incumbents' obligations when CLECs furnish their own splitters for use in line sharing. AT&T Ex Parte at 3. Specifically, AT&T lists what it asserts are the "operational requirements" to support line splitting for CLECs using the UNE-P. *Id.* at 4 & Attach. 8.

AT&T's invocation of the UNE-P is misleading. As noted above, AT&T and other CLECs can use unbundled loops, unbundled local switching/shared transport to provide voice services that are packaged with a data offering over the same loop. They need only purchase these elements and order two cross-connects: a cross-connect from the unbundled loop to their (or a partnering data CLEC's) collocated splitter and another cross-connect from the splitter to the ILEC's switch port so that the voice traffic can be routed back to the ILEC's switch. This is not a UNE-P service, however. By definition, the UNE-P is a platform of network elements that are already combined for the incumbent's own service. When a carrier seeks to disconnect a loop from the incumbent's switch and reconnect it to a newly provisioned splitter, it no longer seeks the UNE-P, but rather a new service architecture, which contains new equipment not currently installed in the incumbent's network. In short, AT&T is interested in converting UNE-P arrangements to line-splitting arrangements – not in UNE-P arrangements.

In any event, AT&T's proposals are far from mere clarifications or "operational requirements." There are established standards for preordering, ordering, provisioning, maintenance and repair, and billing. AT&T is instead proposing that ILECs be held to new standards that far exceed – and in some instances contradict –industry standards or existing system capabilities. As described in greater detail below, AT&T's suggestions cannot be accommodated using SBC's existing systems and software. Indeed, although AT&T repeatedly claims that line sharing and line splitting are functionally equivalent, *id.* at 5-6, they are very different. As the Commission recognized in the *Line Sharing Order*, "[i]t is clear from the record that the complexities involved with implementing line sharing dramatically increase" as the number of service providers increases.[16]

Moreover, before the Commission could consider imposing any detailed regulatory requirements, it would have to decide which carrier has control of the loop. While SBC believes that paragraph 73 of the *Line Sharing Order* makes clear that the carrier using the high-frequency portion of the loop (the "DLEC") has the right to control the loop, the lack

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Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks, Rulemaking 93-04-003 (Cal. PUC May 26, 2000).

[16] *Line Sharing Order*, 14 FCC Rcd at 20948, ¶ 74. *Cf. id.* ("serving multiple customers would be very costly, time consuming, and would lead to *complex operational difficulties*") (emphasis added).

of an explicit rule has created the potential for confusion in the marketplace.[17] In addition, AT&T has not specified the particular line-splitting arrangement it has in mind – in particular, whether the voice CLEC or the data CLEC will have the splitter, be responsible for ordering UNEs from the incumbent, and receive bills. Processes such as ordering will likely vary depending on the allocation of these responsibilities. In particular, line splitting could be more problematic if the incumbent does not have a *single* point of contact and a *single* customer (either the voice CLEC or the data CLEC) for all ordering, provisioning, and billing. Thus, the Commission could not address AT&T's proposals in an informed way without knowing exactly what the respective responsibilities of the partnering CLECs would be.

Accordingly, it would be both inappropriate and unwise to adopt any requirements at this time. Nevertheless, the following sections provide specific responses to the suggestions in Attachment 8 of AT&T's Ex Parte. These responses demonstrate the complexity and difficulty (and, in some cases, illegality) of some of AT&T's proposals, but also that SBC is prepared to work with AT&T and other interested CLECs to resolve these sorts of issues reasonably and within the law.

I. Ordering and Provisioning.

AT&T argues that ILECs must establish a "simple UNE-P-like ordering and provisioning process." AT&T Ex Parte, Attach. 8 at 1. AT&T's suggested procedures, however, would require time-consuming and expensive alterations to SBC's systems, if they could be accomplished at all.

AT&T wants to be able to submit a single, mechanized LSR to add xDSL capabilities to an existing UNE-P arrangement. *Id.* Currently, a CLEC would send three LSRs to add xDSL capabilities: one LSR triggers the service order(s) needed to disconnect the UNE-P; a second LSR triggers the service order(s) needed to deliver the xDSL-capable loop to the appropriate CLEC's collocation cage; and a third LSR establishes the order for the switch port. It should be stressed that each LSR sent by the CLEC may generate multiple service orders, which SBC sends through its systems to effectuate the service request. Thus, SBC's existing ordering processes would require both multiple LSRs and multiple orders to add xDSL capabilities for UNE-P CLECs.

AT&T incorrectly suggests that there are no "practical or technical differences in the work necessary to provide access to a loop for the purposes of supporting line sharing or line splitting." AT&T Ex Parte at 5. In fact, there are currently no industry standards for such service requests; absent such standards, CLECs could request varying – and potentially inconsistent – requirements. In addition, due to the absence of industry standards, the ILECs would themselves have to develop forms and processing flows to have the disaggregated UNE-P loop and port delivered to the same place at the same time. As an example, the following provides a brief summary of some of the modifications that

[17] *See* Letter from Steve Dyke, SBC, to Magalie Roman Salas, FCC, August 4, 2000.

would have to be made in the five states served by Southwestern Bell Telephone Company ("SWBT"):

- SWBT would need to secure assignment of a new requisition order type from the Ordering and Billing Forum ("OBF").

- SWBT's inventory and engineering system, known as Trunk Integrated Record Keeping System ("TIRKS"), would need major reprogramming to bring TIRKS into this process flow and then account for the redesign of the UNE-P arrangement. TIRKS would have to be modified to accept two different connecting facility assignments ("CFAs"): a CFA connected to the disaggregated UNE-P switch port and another CFA connected to the disaggregated UNE-P xDSL-capable loop. Similar modifications would have to be made to SWBT's Facility Assignment and Control System ("FACS").

- SWBT's Customer Record Information System ("CRIS") Toll File Guide (also known as an "N" service order) would need to be updated to accept any new Field Identifiers ("FIDs") or Universal Service Order Codes ("USOCs"). There is no CRIS Toll File Guide for loops alone, so a system would need to be created to allow for such activities as creation of listings and billing for operator services.

- SWBT's 911 systems would need to be able to process this new order type and identify it.

- SWBT's Customer Access Billing System ("CABS") would need to be programmed to accept the new FIDs and USOCs for billing.

- SWBT's Service Order Retrieval and Distribution ("SORD") system, which allows SWBT's service representatives to input their service orders, would also need to be reprogrammed to accept this new type of arrangement, as would CLEC interface systems such as Electronic Data Interface ("EDI"), Local Exchange ("LEX"), and Local Access Service Request ("LASR").

- To accomplish electronic flow-through of the CLEC's LSR, SWBT's systems would need to be modified to allow for mechanized order generation ("MOG"). Any changes to SWBT's current request flow would require modification to LASR to process the new fields that would be required on the request. It would also be necessary to re-program the information that is passed by LASR to MOG to SORD.

- SBC would need new reject codes for orders that cannot be processed under all the possible line-splitting scenarios, which would vary depending upon: (1) who owns the splitter; (2) who provides the switch; (3) the number of collocation arrangements; and (4) who owns the collocation arrangement, if there is only one.

- SWBT's Held Order Tracking System ("SHOTS"), which tracks facility shortages and LASR, which processes the jeopardy codes to get an estimated due date and creates a reason code that is available to the CLECs, would need to be updated for the new jeopardy types.

- Maintenance systems such as Workforce Administrator ("WFA") and Toolbar would need to be reprogrammed to recognize trouble tickets for the new line-splitting arrangement and accept trouble tickets from the appropriate CLEC (either the voice provider or the data provider), depending on which CLEC is SWBT's customer of record.

- SWBT's internal training and CLEC handbooks, guides, and websites would need to be updated.

AT&T also suggests a single-LSR process for ordering a new loop and port that would be combined within the CLEC's collocation space. AT&T Ex Parte, Attach. 8 at 1. Once again, it is important to emphasize that different service arrangements have different implications for the ordering process. Currently, a single CLEC that provides both voice and data would send two LSRs: one LSR to cable the UNE switch port to the CLEC's collocation space, and a second LSR to cable the UNE xDSL-capable loop to the CLEC's collocation space. If a voice CLEC and data CLEC share the same collocation cage, the ordering process is the same; however, SBC would expect the LSRs to be originated by the CLEC that has been designated as the "Primary CLEC" as outlined in SBC's collocation practices. There may also be service arrangements where the CLEC providing voice service and the DLEC providing data service have different collocation cages with cage-to-cage connections. In that circumstance, two LSRs are necessary, and each LSR would be originated by the CLEC that "owns" the collocation cage. While it might be possible, with substantial additional systems development, to develop a single LSR process for the first two scenarios, it is simply not possible to develop a single LSR process for the latter scenario, because each company must order its own respective elements to its own cage.

AT&T next asks that, "[t]o the extent the CLECs require additional information to submit an order to add DSL to a working UNE-P line, or to provide DSL with a newly installed loop, the ILEC must make the information available to the CLEC through a mechanized pre-ordering transaction that can be integrated into the CLEC's order." *Id.* SBC already has such a mechanized loop qualification process in place. In SWBT territory, for example, loop qualification provides the detailed, customer-specific loop makeup information the service provider needs to make a decision regarding the provisioning of xDSL service, including: the 26-gauge equivalent loop length; the length of the loop by gauge; the quantity of bridged tap, load coils, and repeaters present on the loop; the length of the feeder and distribution cable; the presence (or absence) of DLC in the loop; and the presence of potentially disturbing technologies in the same and/or adjacent binder groups. The available data and the process for obtaining this data are the same whether the CLEC plans to order an xDSL-capable loop, to order the high frequency

portion of the loop, or to convert an existing UNE-P to an unbundled xDSL-capable loop and unbundled switch port with transport. CLECs may request mechanized loop qualification or manual loop qualification through SWBT's Verigate and EDI/CORBA interfaces.

AT&T insists that ILECs should not be permitted to require a greater number of cross-connections, nor a greater length of tie pairs, than are employed when the ILEC line shares with its own data affiliate or another data CLEC. *Id.* This is a silly argument. The length of cross-connects and any associated cabling in a line-splitting arrangement will obviously depend upon the location of the CLEC's collocated splitter. Likewise, if the CLEC and DLEC utilize separate collocation cages, additional cabling would be required to connect their line-splitting arrangement between those cages, thereby adding additional length to the overall service arrangement.

AT&T also argues that UNE-P CLECs should be able to obtain loop qualification and loop conditioning upon request, but should not be required to perform loop qualification. *Id.* Although, as noted, CLECs are able to perform loop qualification to determine if the loop is xDSL-capable, SBC does not require CLECs to perform loop qualification. If a CLEC chooses to order a loop without qualification, however, it does so on an as-is basis and assumes the risk that the loop may not support its intended xDSL service. SBC has long provided CLECs the option of obtaining conditioned loops.

According to AT&T, the ILEC ordering process may not require a "re-specification (i.e., re-ordering) of, or result in loss of any features or information specific to, the current retail voice service of the end user." *Id.* SBC is unaware of any changes in features or information that would result from reconfiguring an existing UNE-P to terminate at a collocation space for the purpose of adding xDSL. Re-ordering is required, however, to the extent that a CLEC has a non-xDSL-capable loop and wants an xDSL-capable loop.

AT&T claims that the operational processes for ordering and provisioning should be the same as for "any other UNE-P," or as close as possible. *Id.* Attach. 8 at 2. As noted above, however, when a carrier seeks to disconnect a loop from the incumbent's switch and reconnect it to a newly provisioned splitter, it no longer seeks the UNE-P, but rather a completely new service architecture. Thus, UNE-P processes may not be an appropriate analog for the new configuration. Nor would it necessarily make sense for the industry as a whole to tie ordering and provisioning processes for all line splitting on the possible business plan of a single CLEC, which evidently is contemplating migration of existing UNE-P customers to line-splitting arrangements.

Finally, AT&T asserts that the ILEC should accept and process orders to reconfigure a UNE-P combination even if the carrier number of the carrier requesting the reconfiguration is different from the carrier number of the carrier establishing the initial service reconfiguration. *Id.* As noted, however, it is critical that the Commission first establish who controls the loop to avoid conflicts and confusion. The incumbent should be required only to deal with the carrier that controls the loop, not additional carriers. The

incumbent should not be asked to decide whether a particular order is submitted by mistake or pursuant to some agreement between CLECs. Requiring only that the ILEC deal with the carrier that controls the loop avoids such confusion. The arrangements between line-splitting CLECs are, as AT&T elsewhere stresses, their business. If the voice and data CLEC have a dispute or simply a misunderstanding, they should resolve it and speak with one voice in their relationship with the incumbent.

Similarly, in situations where two CLECs both are collocated, SBC recommends that the ILEC deal exclusively with the "primary" owner of the collocation space and bill that company for UNEs used in line splitting. Thus, if carriers are sharing a collocation arrangement, the primary owner of the arrangement is the carrier from which the incumbent should expect to get an order. If, however, both CLECs are ordering UNEs to their respective collocation spaces, then each should order their respective UNEs for delivery to its collocation cage. This arrangement will minimize confusion and conflict, and will not, in any way, delay or impede service delivery.

II. Maintenance and Repair.

AT&T claims that "ILECs must provide maintenance and repair ("M&R") functions for the voice service aspect of the UNE-P+DSL configuration in the same manner they provide M&R for voice-only UNE-P services." AT&T Ex Parte, Attach. 8 at 2. As we have explained above, what AT&T seeks is not a form of the UNE-P but a new network arrangement that includes UNEs; SBC will, of course, provide maintenance and repair functions for its UNEs consistent with its interconnection agreements. While using some of the same processes as for UNE-P may be appropriate in this different context, other processes may not be transferable. Moreover, the incumbent's legal obligation in providing UNEs is affording nondiscriminatory access; this Commission has properly rejected calls to dictate the particular operational processes ILECs use to satisfy their nondiscrimination obligation.

AT&T also proposes that CLECs connect the loop and port using an ANSI-compliant splitter. Here, AT&T fails to mention that compliance with NEBS Level 1 standards could also be required. *See* First Report and Order and Further Notice of Proposed Rulemaking, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 4761, 4781, ¶ 35 (1999) ("*Collocation Order*"); Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147, 96-98, FCC 00-297, ¶¶ 54-57 (rel. Aug. 10, 2000) ("*Collocation Reconsideration Order*"). In addition, the Commission has made clear that "an incumbent LEC may impose safety standards in addition to the NEBS safety standards, provided the incumbent does not impose safety requirements that are more stringent than the safety requirements it imposes on its own equipment that it locates at its premises." *Collocation Reconsideration Order* ¶ 56. The Commission does "not preclude incumbent LECs from imposing on their own equipment and collocators' equipment safety standards in addition to the NEBS Level 1 safety requirements." *Id.*

III. Performance Measures.

The Commission has repeatedly concluded that performance measurements and monitoring plans are best developed by the states. The Commission has explained that it would be "premature" to consider the adoption of a national standard precisely because "states are considering performance standards" and because the Commission has not "developed a sufficient record to consider proposing performance standards."[18] As recently as the *Texas 271 Order*, the Commission reiterated that "metric definitions and incumbent LEC operating systems will likely vary among states," and any assessment of compliance with the 1996 Act must "consider the BOC's performance within the context of each respective state." *Texas 271 Order* ¶ 55.

It could not be otherwise. A national performance standard could not take into account the differences in underlying incumbent networks and systems. For some incumbents, the standard would be too low, and therefore ineffectual. For other incumbents, the standard would require more than their existing networks can offer, in violation of the Eighth Circuit's holding that the 1996 Act does not permit the Commission to insist upon superior quality for CLECs. The state-by-state application process Congress prescribed for section 271 reflects this reality. *See* 47 U.S.C. § 271(d)(1); *see also* Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd 3953, 4217 (1999) (Statement of Commissioner Michael K. Powell) (noting that "state commissions do have an intimate understanding of the applicant, the local market and the various technical and economic issues surrounding [271] checklist compliance" and that the Commission could not "possibly develop the performance metrics and undertake the technical evaluations that a state commission can").

Pursuant to state commission orders across its in-region service territory, SBC has performance measurements in place for UNEs that CLECs will order for line splitting: switch ports and xDSL-capable loops. For example, this Commission found the Texas measurements adequate when it evaluated SBC's Texas 271 application. *See Texas 271 Order* ¶¶ 54-58, 284-306, 423-430. SBC also has mechanisms in place to ensure that its performance measurements and monitoring are revised, through collaborative processes, to reflect market developments. *See id.* ¶ 425 & n.1243 (discussing Texas six-month review). These collaborative processes are the appropriate forum for addressing performance monitoring issues relating to new line-splitting arrangements.

One question that would have to be resolved in these collaborative sessions is the extent to which incumbents will be able to track line-splitting arrangements. The incumbent will not necessarily know that line splitting is occurring. The incumbent provides the network elements, but (absent a voluntary arrangement between CLEC(s) and

[18] Notice of Proposed Rulemaking, *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, 13 FCC Rcd 12817, 12869, ¶ 125 (1998) ("*Performance Measurements NPRM*").

the incumbent) the CLEC(s) would install the splitter and complete their own service arrangement. Thus, the incumbent LEC might not know that line splitting is taking place.

AT&T suggests specific performance measures and benchmarks for assessing ILEC's line-splitting performance. AT&T Ex Parte, Attach. 8 at 2-3. In SBC's service areas, measures already have been developed to address AT&T's suggested criteria. If a voice CLEC ordered unbundled facilities and split the line with a data CLEC, SBC's performance in serving the voice CLEC would be captured by the existing measures. Likewise, if a data CLEC splits its facilities with a voice carrier, SBC's performance in serving the data CLEC would be tracked.

If, despite this existing reporting, there were a need for new measures, that would be an issue for the states to address in the first instance. Particularly given state commissions' reliance on liquidated damages remedies, any additional performance measures should reflect the incumbent's contractual rights and obligations. If, for instance, the incumbent were compensated only for maintaining either the voice or the data portion of the line, there would be no basis for penalizing the incumbent based on its performance in responding to trouble reports for the other portion of the line. The states' examinations also would have to consider questions such as which carrier "owns" the line; is the line a POTS line or an xDSL-capable ("Special") line; and whether the end user migrates from a CLEC's UNE-P arrangement or the incumbent's POTS service. In other words, before developing particular performance measurements to address line splitting, it is necessary first to determine who owns the line and the precise relationship between the ILEC, voice CLEC, and data CLEC.

Similarly, while AT&T suggests the incumbent's line-sharing performance as a benchmark for line-splitting performance, it is not clear that such a comparison would be appropriate. In particular, the voice CLEC/data CLEC relationship may create additional points of failure outside the incumbent's control, for which the incumbent should not be held responsible.

Finally, AT&T asserts that changes to OSS that are required by line splitting should completed in 90 days. *Id.* Attach. 8 at 3. In fact, as discussed above, substantial changes to OSS would be necessary. Those changes may be more complex and take longer to implement than those required for line sharing, for which the Commission allowed an implementation period of 180 days.

IV. Billing Requirements.

AT&T seeks telephone number-based billing for UNEs used to provide voice service or both voice and data service. AT&T Ex Parte, Attach. 8 at 3. No UNEs except switch ports, however, are associated with a telephone number in ILECs' systems; rather, UNEs are tracked based upon circuit identifications. In addition, some line-splitting configurations may require separate LSRs from different CLECs. In this situation, it would not be possible to track each carrier's LSRs using a unique associated telephone number, because there would only be one telephone number in the ILEC's records.

Second, AT&T contends that "[a]ll usage records delivered for UNE-P+DSL must conform to existing record exchange agreements, including, but not limited to, use of the same interface and identification of the telephone number of the originating call." *Id.* SBC will, of course, abide by its existing agreements. SBC notes, however, that usage records are available for the traffic that goes to SBC's circuit switch. They are not generated for data traffic, which bypasses the switch.

Third, and contrary to its request for telephone number identification of voice/data lines, AT&T proposes that records for elements that are used for data services should be maintained in a mutually agreeable manner, such as by circuit ID. *Id.* Unlike AT&T's suggestion of telephone number IDs, this request is consistent with industry practice. SBC's systems identify the UNEs for which a customer is being billed, including elements used for data services.

AT&T additionally suggests a "jointly utilized circuit ID" that would be shared by the ILEC and CLEC(s). It is unclear what AT&T means. ILECs and CLECs provision and assign their own circuit IDs. ILECs do not jointly provision individual circuits with CLECs, so there is no need for a common circuit ID.

V. Shared Collocation Arrangements.

AT&T proposes various requirements for supporting shared collocation arrangements among CLECs. AT&T Ex Parte, Attach. 8 at 3-4.

The appropriate course in the shared collocation situation is to have a single carrier, the primary owner of the collocation space, deliver all LSRs and trouble reports relating to the split line and receive all bills. Likewise, the CLEC that owns the collocation space would deliver any transfer orders. This arrangement will allow clear lines of communication between the ILEC and the CLECs and allow the CLECs to enter into appropriate (and changing) relationships among themselves without the risk of service disruption and billing confusion. The ILEC would conduct transactions with other CLECs to the extent they are ordering UNEs for delivery to separate collocation space, but otherwise, the ILEC would deal with the primary owner of the collocation space where the splitter is located.

AT&T argues that CLECs must be allowed to sublease collocation space to one another without any additional charges from the incumbent. *Id.* Attach. 8 at 3. CLECs may sublease space to one another. If, however, an incumbent incurs additional costs as a result, the incumbent must be allowed to recover those costs, and not just increased costs due to increased floor space or power. *See Collocation Order*, 14 FCC Rcd at 4784, ¶ 41 (noting that carriers are properly charged "for those costs directly attributable to that carrier").

AT&T next contends that the terms of sharing arrangements "shall be governed solely by a commercial agreement between the CLECs engaging in such shared use."

AT&T Ex Parte, Attach. 8 at 4. CLECs may of course reach their own agreement regarding shared space. Both CLECs, however, must comply with the incumbent's collocation requirements. An agreement between two collocating carriers could not negate those carriers' obligation to comply with the ILEC's collocation requirements, including all security rules. For example, the D.C. Circuit recently noted that it is inconsistent with the 1996 Act to conclude that "competitors, over the objection of LEC property owners, are free to pick and choose preferred space on the LECs' premises, subject only to technical feasibility." *GTE Serv. Corp. v. FCC*, 205 F.3d 416, 426 (D.C. Cir. 2000).

AT&T additionally claims that "ILECs must permit and operationally support shared use of virtually collocated equipment," including "provisioning and maintenance activities for either of the sharing parties as if each had the same rights as the initial collocator." AT&T Ex Parte, Attach. 8 at 4. There is no requirement that ILECs permit the sharing of virtually collocated equipment in any of the Commission's orders. On the other hand, the relationships that CLECs reach among themselves are up to them. SBC's relationship is with the CLEC that has the virtually collocated equipment.

With respect to AT&T's claims about in-office wiring and shared connecting facilities, *id.*, SBC, on a voluntary basis, currently allows CLECs to use cross connects.[19] SBC has the right to stop, because the D.C. Circuit recently held that such cross-connect requirements are inconsistent with the 1996 Act. *GTE Serv. Corp.*, 205 F.3d at 423 (citing *Collocation Order*, 14 FCC Rcd at 4780, ¶ 33). "The obvious problem," the court said, is that requiring incumbents to allow CLEC/CLEC cross-connects "imposes an obligation on LECs that has no apparent basis in the statute" because "[s]ection 251(c)(6) is focused solely on connecting new competitors to the LECs' networks." *Id.* The court chastised the Commission for "not even attempt[ing] to show that cross-connects are in any sense 'necessary for interconnection or access to unbundled network elements'" and instead "cavalier[ly] . . . suggesting that cross-connects are efficient and therefore justified under § 251(c)(6)." *Id.* "The FCC cannot reasonably blind itself to statutory terms in the name of efficiency." *Id.* at 424. Because the Commission must comply with the D.C. Circuit's holding, it may not require carriers to permit CLECs to install CLEC-to-CLEC cross-connects.

Finally, AT&T claims that, if an ILEC brings a legal challenge to a specific shared use of equipment, facilities, or collocation, the ILEC must continue to permit existing sharing arrangements as well as new ones during the pendency of such legal action. AT&T Ex Parte, Attach. 8 at 4. As noted, however, several of AT&T's proposed requirements clearly violate the Act. The Commission could not impose unlawful requirements for *any* period of time. Moreover, the interim effectiveness of FCC or state commission requirements that are challenged in court is a question for the court, not this Commission.

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[19] *See* Letter from Jay Bennett, SBC, to Magalie Salas, FCC, April 18, 2000.

VI. Pricing.

AT&T argues that cost-based pricing is required for "cross-connection work and all other activities" associated with line splitting. AT&T Ex Parte, Attach. 8 at 4. If a CLEC is ordering a UNE, then SBC agrees that UNE pricing applies. But UNE pricing does not apply when a CLEC orders new combinations or services from an ILEC that are used, not for interconnection with the ILEC or access to UNEs, but for interconnection with another carrier. A requirement that LECs "allow collocating competitors to interconnect their equipment with other collocating carriers . . . has no apparent basis in the statute." *GTE Serv. Corp.*, 205 F.3d at 423. Thus, if an ILEC chooses to allow collocating CLECs to construct cross-connects or otherwise provides services that are not used for access to UNEs or interconnection with the ILEC, the 1996 Act's cost-based pricing restrictions do not apply.

Nor can the ILEC be required to justify the level of its negotiated charges in relation to line-sharing charges. *See* AT&T Ex Parte, Attach. 8 at 4. Whereas the Commission has concluded that the high-frequency portion of a loop is an unbundled network element when the ILEC provides voice-service, it expressly held that CLECs are not impaired when the ILEC is not the voice provider.[20] Thus, access to the high-frequency portion of the loop when the ILEC is providing voice service is subject to UNE pricing, whereas line splitting does not involve access to UNEs or interconnection with the ILEC.

Finally, it should be emphasized that incumbents cannot be held responsible for allocating charges between CLECs that line split. As AT&T stresses throughout its filing, ILECs are not, and should not be, involved in the contractual arrangements between CLECs that line split. And because line splitting implicates neither access to UNEs nor interconnection with the ILEC, there is not even a statutory toe hold for seeking to assign cost-allocation responsibilities to the incumbent.

VII. Other Issues.

AT&T claims that ILEC procedures must permit a records-only change to transfer the high frequency portion of the loop ("HFPL") among CLECs. AT&T Ex Parte, Attach. 8 at 4. Regardless of the form of HFPL provisioned originally, a change of CLEC will require some actual physical work when the ILEC owns the splitter, because the work will involve delivering the data to the new CLEC's collocation arrangement. For example, if an ILEC is sharing with a data CLEC, the ILEC is providing the splitter, and the data CLEC agrees to line share with a CLEC (and assuming the data CLEC has control of the line), one of the CLECs would have to collocate a splitter. SBC would have to disconnect its splitter and connect the cable pair lead to the collocation cabling. If the DLEC and CLEC are sharing collocation space, SBC would also need to connect the switch port to the collocation cabling. If they have separate collocation equipment, SBC would have to

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[20] *Line Sharing Order*, 14 FCC Rcd at 20947, ¶ 72 & n.160.

connect the switch port to the collocation cabling to the voice CLEC. Similarly, if the ILEC is line sharing with the data CLEC, the ILEC is providing the splitter, and the DLEC does not agree to line share with the CLEC (and again assuming that the data CLEC has control), physical work must still be done. The ILEC would need to disconnect the wiring to the splitter and reconnect the existing cable pair to the DLEC's collocation cabling. The voice CLEC would have to order a separate loop and switch port.

Physical work is also required when the data CLEC provides the splitter, the data CLEC does not agree to line share with the CLEC (assuming the DLEC has control), and the data CLEC wishes to continue providing xDSL service to the end user. In that scenario, the voice CLEC would have to order a separate loop and switch port. The ILEC would disconnect the cabling from the data CLEC's splitter to the ILEC's switch.

The only scenario in which no physical work by the incumbent might not be required is when the ILEC is line sharing with the data CLEC, the data CLEC provides the splitter, the data CLEC agrees to line share with the CLEC (and assuming the data CLEC has control), *and* the data CLEC has agreed to share its collocation space with the voice CLEC. If the voice CLEC had its own collocation space and wanted the switch port terminated at its space, physical work would be necessary to disconnect the cabling from the data CLEC to the ILEC switch and to reconnect it to the voice CLEC's collocation cabling.

Thus, as noted, it is critical first to determine which carrier has control of the line-split loop,[21] and which carrier is providing the splitter. ILECs should not be put in the position of accepting any and all LSRs relating to their UNEs, regardless of ownership or authorization, because of the potential for disputes between CLECs and disruption of service. If the CLEC providing the splitter loses the end user to a competing CLEC, the service must be re-arranged to the new CLEC's splitter. This would obviously be more complex than a "records-only change."

AT&T asks that ILECs be prohibited from requiring a CLEC to terminate a UNE loop and switch port in a collocation space, if collocation is not required to access additional functionality provided by the collocated equipment. AT&T Ex Parte, Attach. 8 at 5. This is a nonsensical request, inasmuch as the technologies that are provisioned over line sharing or line splitting require a collocated DSLAM. That is, CLECs cannot take advantage of line sharing or line splitting without collocation because of the physical limitations of the technology. To access the "additional functionality" of line splitting, collocation is necessary.

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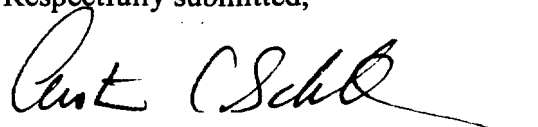
[21] *See* Letter from Steve Dyke, SBC, to Magalie Roman Salas, FCC, August 4, 2000.

As the above discussion suggests, additional issues surrounding line splitting will not be resolved by a single ex parte from AT&T or any other carrier. Nor will they be resolved overnight, even with the cooperation of all carriers. The Commission should not short-circuit industry solutions, and certainly should not adopt the one-sided proposals of AT&T.

An original and two copies of this letter are being submitted for inclusion in the public record. Please let me know if you have any questions about this matter.

Respectfully submitted,



Austin C. Schlick

cc: Ms. Carey
Mr. Carr
Ms. Egler
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